

The Meaningful Vote on Brexit: the End of the Beginning or the Beginning of the End?

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Tomorrow, the House of Commons will, barring a last minute delay, be the stage for the conclusion of the most dramatic parliamentary debate of the Brexit process so far: the meaningful vote on the Brexit deal. In strict constitutional terms the question is simple: will MPs decide to approve the motion that is legally required (by the [EU \(Withdrawal\) Act 2018](#)) to enable the Withdrawal Agreement to be ratified before exit day?

However, the political and procedural reality is, as one would expect, less simple. It is impossible to predict what might happen if the deal is rejected. A key element of the drama will be played by the six amendments that will be selected by the Speaker of the House of Commons, John Bercow MP. It is difficult to overstate the potential significance of Tuesday's parliamentary proceedings. Not only could they have major consequences for the outcome of the Brexit process, the conclusion of the meaningful vote also represents a test of parliamentary democracy.

In this post I analyse a number of the elements of the meaningful vote process to watch out for on Tuesday:

The legal requirement

The legal basis of the meaningful vote is to be found in a legislative provision, enacted in June 2018: [Section 13 of the EU \(Withdrawal\) Act 2018](#). Section 13 was a compromise between the Government and Conservative backbenchers, led by the former Attorney General, Dominic Grieve QC MP. The provision is more complex than it at first appears. The basic requirement in play on Tuesday is that the House of Commons must agree a resolution that approves both the Withdrawal Agreement and the Framework on the Future Relationship in order for the former to be ratified by the Government. In legal terms it grants the Commons a veto over the ratification of the Withdrawal Agreement. The text of the Government's motion, which is designed to meet this legal requirement, and which the Commons will decide upon on Tuesday, or whenever the meaningful vote concludes, states:

That this House approves for the purposes of section 13(1)(b) of the European Union (Withdrawal) Act 2018, the negotiated withdrawal agreement laid before the House on Monday 26 November 2018 with the title 'Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community' and the framework for the future relationship laid before the House on Monday 26 November 2018 with the title

‘Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom’.

The Framework on the Future Relationship

A notable feature of Section 13 is that it requires the Commons to approve the Framework on the Future Relationship (the Framework). The conclusion of the meaningful vote could be used by MPs to attempt to shift the Government’s position on the Future Relationship. However, the political focus has shifted away from the wiggle room afforded by the non-binding Framework and towards the Withdrawal Agreement and in particular, the Protocol on Ireland and Northern Ireland. This shift has made it much harder for the Government to find a way of getting the deal over the line.

Amendments

The basic mechanics of the final day of the meaningful vote were decided on the first day of the debate on the deal, Tuesday 4 December 2018, through the Business of the House Motion ([the text of which can be found on the Order Paper for that day](#)). This confirmed two significant elements of the process for the final day of debate: the Speaker would be able to select six amendments to the Government’s motion (set out above); and the amendments selected would be decided upon by the Commons before the ultimate decision on whether to accept Government’s motion ([all of the amendments tabled so far can be found on the Order Paper for 10 December](#)).

In terms of the process of selecting the six amendments, there are a number of factors that could be taken into account by the Speaker, including:

- when the amendment was tabled;
- who tabled the amendment;
- the number of MPs known to support the amendment; and
- the substance of the amendment.

To maximise the scope of the debate, one would imagine that the Speaker would want to select six amendments that reflect a range of views across the House. In that sense, the most important factors could be the substance of the amendments and their level of support among MPs. The Speaker does not give reasons for selection, so we are unlikely to find out the basis upon which the six amendments were selected.

The Speaker must also decide the order in which amendments are to be taken. For example, the Speaker could decide to order them according to the extent to which they conform to the Government’s motion to approve the deal. According to such a logic, the Commons would start with the amendments that are most at odds with approving both elements of the deal. The final amendment in the order would be closest to, or compatible with, approving the Government’s deal. Only if all

six amendments were rejected would the Commons be able to decide on a 'clean version' of the Government's motion.

Examples

Hilary Benn MP, the Chair of the Commons Exiting the EU Committee, has tabled an amendment (amendment (c)) that would delete the entire text of the Government's motion and replace it with words that state the Commons:

- rejects the deal;
- rejects no deal; and
- asks the Government to initiate the post-rejection parliamentary proceedings and allows amendments to be made in those proceedings (more on those below).

If this amendment were selected first, and the Commons decided to agree to it, then the five other amendments selected would fall, and the only remaining decision would be to approve the final motion as amended.

At the other end of the spectrum would be the amendment tabled by Sir Hugo Swire MP (amendment (m)) which seeks to approve the deal subject to the Government committing to introduce legislation that would:

- require the Government to report in March 2020 on the status of arrangements to supersede the Northern Ireland backstop;
- consider the views of the devolved administrations in particular the Northern Ireland Executive and Assembly;
- enable the House of Commons to approve the Government's proposed approach, including whether or not an extension to the implementation period should be pursued; and
- approve of the commencement of the powers implementing the Northern Ireland backstop.

Swire's is one of the only amendments tabled thus far that is compatible with approving the deal, and therefore, if it was agreed, would still enable the Withdrawal Agreement to be ratified. However, if this amendment was selected by Speaker to be the sixth and final amendment, in order for MPs to get the chance to agree to it, MPs would have to disagree to any preceding amendments that sought to reject the deal.

What happens next if the deal is rejected?

If the Government fails to get the deal through the Commons, the first question to ask is how was the defeat inflicted? If it was through the Commons deciding to amend the motion, for example by passing the Benn amendment, the text of the amendment should provide an indication of what might happen next. It should be stressed that any amendment to the Government's motion cannot create a binding legal obligation. The Benn amendment's proposed rejection of no deal would be of

no legal effect. However, it could politically influence the Government's response to the Commons' decision to reject the deal.

By virtue of section 13 of the EUW Act 2018, the Government must respond to a Commons' rejection by making a statement on how it intends to respond within 21 days. The substance of this statement could enable the Government to set out whether it intends to exit the EU without a deal or, as many now expect, to make a second attempt at Commons approval.

Within seven days of the Government making the statement, the Government must table a motion, in neutral terms, to enable the Commons to consider the Government's statement responding to the rejection. On the first day of debate on the deal, Tuesday 4 December, the Government was defeated by an amendment, tabled by Dominic Grieve, which means that the motion on the Government's statement will be subject to amendments by the Commons. This change is designed to level the playing field between the Commons and the Government. It enables the Commons to amend the motion on the statement, and to provide directions as to the next steps. Again it should be emphasised that such amendments would not be able to impose legal obligations upon the Government.

If the Government wanted to make a second attempt to get the deal through the Commons, it would have to table another motion that met the legal requirement in section 13 of the EU (Withdrawal) Act 2018 to enable ratification. The motion need not take the same form as the first attempt (Erskine May, the guide to Commons' procedure, indicates that once a proposal is rejected by the Commons, the very same proposal should not be put in the same session).

What would happen if the deal is approved?

If the Government can confound expectations and get the deal through on Tuesday then the Government would then have to begin, probably swiftly, the process of implementing the Withdrawal Agreement in domestic law through the EU (Withdrawal Agreement) Bill. Section 13 of the EU (Withdrawal) Act 2018 requires that the Bill to implement the Withdrawal Agreement is enacted before exit day to enable ratification of the treaty. To get this Bill through to Royal Assent will require the Government to win a series of meaningful votes in the Commons at each of the stages of the legislative process. That process will give MPs the chance to amend the Bill and create binding legal obligations. For example, MPs could seek to amend provisions implementing the Protocol on Ireland and Northern Ireland. Such amendments could, if agreed, potentially derail the approval process. The crucial point being that should the Government get to the implementation stage, it will need to hold together the same coalition that got the deal past the meaningful vote through a number of votes in the Commons.

The beginning of the end or the end of the beginning?

The meaningful vote is in theory only about two agreements, a treaty and a political declaration. However, the reality is that there is much more at stake. After the referendum result in 2016 and much else in between, and with exit day less than four months away, many with good reason assumed that the meaningful vote left the Commons with limited options. However, it seems that a number of MPs and a significant portion of the public have other ideas. The Commons appears to be at the peak of their powers in the Brexit process, but the crucial question is: how will they use them? Will they try and strike a compromise to shape the future relationship or will they opt for something more radical? The meaningful vote will enable the Commons to set the Brexit process on a particular path. Unfortunately whatever happens on Tuesday, we won't know what lies at the end of the chosen path.

